

**NATIONAL PLANT BOARD**

**MODEL NURSERY LAW**

**June 27, 2000**

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## NATIONAL PLANT BOARD

### MODEL NURSERY LAW

*[This document is designed to be used as a working tool along with the National Plant Board Quarantine & Nursery Standards Committee (QNSC) Guidelines as you review your state law(s). We have attempted to do some of the work for you, by referencing the locations within the QNSC Guidelines that apply to the various parts of the Model Law along with examples from various state laws. In addition, reference is made to NAPPO and FAO documents. The sections included in this model are an attempt to outline the principal components of a model law. Each state plant regulatory official will have to determine if additional sections need to be included to address specific issues concerning their state program. Review Chapter IV, Sections C through H (pp. 20 - 28) in the QNSC Guidelines, which outlines the major components of a Model Nursery Inspection Program.]*

*[Explanatory notes are in italics with brackets and the **model law language is in bold and not italicized**. Some suggested language is also presented in **bold-italics**. For purposes of consistency, ‘State Department of Agriculture’ and ‘Secretary of Agriculture’ are used throughout the document. You will need to change these terms to conform with the proper agency and title names used in your state. In addition, many states combine their plant pest and nursery laws into one, but the subcommittee has decided to treat these two regulatory areas separately. The Subcommittee has attempted to make both the Model Plant Pest law and Model Nursery law consistent with one another.]*

*[Suggested Basic Components of a Nursery Law - A review of most of the state nursery laws found the components contained in the Table of Contents as a basic structure. You may wish to change the order of the sections, combine sections, or delete sections. The Model Nursery Law Subcommittee requests National Plant Board member feedback regarding the basic components. Please send your written comments to the President of the National Plant Board or to Donald A. Eggen, Delaware Department of Agriculture, Plant Industries, 2320 South DuPont Highway, Dover, DE 19901-5515, or by e-mail to [don@dda.state.de.us](mailto:don@dda.state.de.us), or by fax to (302)697-4468.]*

*[Note: page numbers listed for the QNSC Guidelines are taken from the hard copy version not the web site version. Because the QNSC Guidelines may be revised, we have also included references to the specific Chapter, Section and Subsection of the QNSC Guidelines. For example: II.B.3. refers to Chapter II, Section B, Subsection 3 – Chapter II is on Pest Risk Analysis & Mitigation, Section B is on Pest Risk Analysis, and Subsection 3 is on Quarantine Pest Identification. Appendices in the QNSC Guidelines have a different format than the chapters and there are differences between appendices. Appendices A, B, C, D, E, J, K and N have Sections delineated with roman numerals I, II, III, etc., subsections with A, B, C, etc., and subsubsections with 1, 2, 3, etc. For example Appendix E.I.A.4. on page 51 refers to Appendix E, Section I, Subsection A, and Subsubsection 4; Appendices F and H use 1, 2, 3, etc. for Section numbers and Appendix H uses a, b, c, etc. for subsections; and Appendices G, I, L, and M have sections headings in bold, underlined, or capital letters, but no numbering system. For these four appendices, we will refer*

to the specific appendix and the section heading.]

## **§0001.        Definitions**

*[Definitions can be found in the QNSC Guidelines in the following Chapters and Appendices: Chapter II. Section A. Subsections 1-14. (pp. 2-4), IV.A.1-15. (pp. 18-19), **Appendix C. Sections I-II. (pp. 35-42)**, Appendix D.II.1-20. (pp. 44-45), Appendix G – Definition of Terms. 1-11. (pp. 62-63), Appendix H.1.a-b. (p. 69), Appendix K.II.1-10. (pp. 85-86), Appendix N.I. (p. 105), and Appendix N.IV.A. (p. 106). Appendix C is the principle location in the QNSC Guidelines for definitions. Not all the definitions found in the QNSC Guidelines are contained in the model law. Each state will have to determine which definitions are appropriate or if you wish to modify a definition to meet the circumstances within your state. For example, in the Delaware Nursery Law, sometimes a broader definition was used, and for other definitions a more specific definition was used depending on the advice from the State Attorney General's Office. Your State Attorney General will have to provide input concerning the language and definitions used in your state plant pest law. The purpose here is to use the QNSC Guidelines to review your current Nursery Law's definitions, and modify your state law(s) if you feel it is deficient or can be changed to more closely reflect the QNSC Guideline definitions. We tried to include as many definitions as possible that were thought to be relevant. Many of the current state laws do not contain very many definitions, and this is an area all National Plant Board members may wish to review. In addition, the USDA Plant Protection Act was passed in May 2000 and was not reviewed for consistency with this model law.]*

*Chapter II. Section A. Subsections 1-14. (pp. 2-4), IV.A.1-15. (pp. 18-19), **Appendix C. Sections I-II. (pp. 35-42)**, Appendix D.II.1-20. (pp. 44-45), Appendix G – Definition of Terms. 1-11. (pp. 62-63), Appendix H.1.a-b. (p. 69), Appendix K.II.1-10. (pp. 85-86), Appendix N.I. (p. 105), and Appendix N.IV.A. (p. 106). Appendix C is the principle location in the QNSC Guidelines for definitions. Not all the definitions found in the QNSC Guidelines are contained in the model law. Each state will have to determine which definitions are appropriate or if you wish to modify a definition to meet the circumstances within your state. For example, in the Delaware Plant Pest Law, sometimes a broader definition was used, and for other definitions a more specific definition was used depending on the advice from the State Attorney General's Office. Your State Attorney General will have to provide input concerning the language and definitions used in your state plant pest law. The purpose here is to use the QNSC Guidelines to review your current Plant Pest Law's definitions, and modify your state law(s) if you feel it is deficient or can be changed to more closely reflect the QNSC Guideline definitions. We tried to include as many definitions as possible that were thought to be relevant. Many of the current state laws do not contain very many definitions, and this is an area all National Plant Board members may wish to review. In addition, the USDA Plant Protection Act was passed in May 2000 and was not reviewed for consistency with this model law.]*

**The following words shall, for purposes of this Law, be defined as follows:**

- (1)        “Agent” - means any person who on behalf of any other person receives on consignment, contracts for, or solicits for sale on commission, any plant product from**

**a producer of such product, or who negotiates the consignment or purchase of any plant product on behalf of any other person.**

*[See Chapter IV. Section A. Definitions 1. (p. 18) and Appendix C.I. (p. 35) – QNSC Guidelines.]*

*[In Delaware, a broader definition is used, but still encompasses the specific definition found in the QNSC Guidelines. The definition below was recommended to the Delaware Department of Agriculture by the State Attorney General's office.*

*The Delaware definition:*

**“Agent” - any person who performs services for another person under an express or implied agreement. A person may be an agent without receiving compensation for services.]**

- (2) **“Broker” - any person who negotiates the purchase or sale of any plant product. A broker may not, however, handle either the plant product which is involved or the proceeds of a sale.**

*[See IV.A.2. (p. 18) and Appendix C.I. (p. 35) – QNSC Guidelines.]*

- (3) **“Certificate” - means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that an article, nursery stock, plant, product, shipment or any other officially regulated *article* meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other set of legal requirements. Such documents are known by their purpose of issuance: Phytosanitary Certificate [for the purpose of verifying compliance with phytosanitary (quarantine) requirements]; Nursery Stock Certificate (for the purpose of verifying compliance with nursery inspection and pest freedom standards); registration or certification tags, seals, etc. (for the purpose of verifying compliance with registration or certification requirements); etc.**

*[See IV.C.7b (p. 24), IV.D. (p. 25), IV.F. (p. 26), Appendix C.I. (p. 36), Appendix G - Definition of Terms. 1. (p. 62), Appendix G - Basic Provisions for Inclusion in Quarantines. 6. (p. 67), Appendix J.III.B.5. (p. 78), Appendix K.II.7. (p. 86), and Appendix L - NURSERY STOCK CERTIFICATION. (pp. 99-101) – QNSC Guidelines.]*

*[Note: there is a slight change from the QNSC definition – ‘regulated thing’ has been changed to ‘regulated **article**’.]*

- (4) **“Certification” - means the act (by a duly authorized regulatory official of the Department) of affirming, declaring, or verifying compliance with phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or any other set of legal requirements.**

*[See Appendix C.I. (p. 36), Appendix G - Basic Provisions for Inclusion in Quarantines. 6. (p. 67), Appendix K.II.6. (p. 86), Appendix L - NURSERY STOCK CERTIFICATION. (pp. 99-101) – QNSC Guidelines.]*

- (5) **“Chain Store” - any business with one or more retail outlets that sells plants, plant material, or nursery stock, and that are owned by a common parent business entity.**

*[There is no definition for “Chain Store” in the QNSC Guidelines, but you may wish to include one.]*

- (6) **“Commission Merchant” - means any person who receives on consignment or solicits any plant product from a licensee or producer of the product; accepts any plant product in trust from a licensee or the producer of the product for purposes of sale; sells any plant product on commission; handles any plant product in any way for the account of or as an agent of the consignor of the product. Any person who accepts a plant product from the producer of such product for the purpose of sale or resale is a commission merchant, unless the person has brought, or agreed to buy, the plant product by a contract which designates the price to be paid to the seller.**

*[See Appendix C.I. (p. 36) – QNSC Guidelines.]*

- (7) **“Consignee” - means any person to whom any plant, nursery stock, horticultural product, horticultural product, agricultural commodity or plant product is shipped for handling, sale, resale, or any other purpose.**

*[See Appendix C.I. (p. 36) – QNSC Guidelines.]*

- (8) **“Consignor” - means any person who ships or delivers to any consignee any plant, nursery stock, horticultural product, agricultural commodity or plant product for handling, planting, sale, resale, or any other purpose.**

*[See Appendix C.I. (p. 36) – QNSC Guidelines.]*

- (9) **“Dealer” - means any person who obtains title to, or possession, control, or delivery of, any plant product from a producer at a designated price for the purpose of resale, or who buys or agrees to buy any plant product from a producer of the plant product at a designated price.**

*[See IV.A.6. (p. 18) and Appendix C.I. (p. 37) – QNSC Guidelines.]*

*[The committee offers the following revised alternative definition: “Dealer” - any person who obtains title to, or possession, control, or delivery of, any plant, plant material, or nursery stock, from a producer for the purpose of resale.]*

- (10) **“Department”** - the State of *(your state’s name)* Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents, or representatives.

*[There is no definition for “Department” in the QNSC Guidelines, but you may wish to include one, or something similar, to define the organization for whom the state plant regulatory official works.]*

- (11) **“Florist”** - includes, but is not limited to, a person or business engaged in the production or sale, wholesale or retail, of plants, plant materials, or nursery stock for temporary, semi-permanent, seasonal, or permanent, indoor or outdoor use.

*[There is no definition for “Florist” in the QNSC Guidelines, but you may wish to include one.]*

- (12) **“Garden Center”** - includes, but is not limited to, a business establishment engaged in the year round retail sale of plants, plant material, or nursery stock from a specific, permanent sales location.

*[There is no definition for “Garden Center” in the QNSC Guidelines, but you may wish to include one.]*

- (13) **“Greenhouse”** - includes, but is not limited to, an establishment or business engaged in the production of plants, plant material, or nursery stock within a climate controlled structure, for distribution beyond on-site or personal use.

*[There is no definition for “Greenhouse” in the QNSC Guidelines, but you may wish to include one.]*

- (14) **“Grower”** - includes, but is not limited to, any person who raises, grows, or propagates, for profit or other reasons, outdoors or indoors, any horticultural product, nursery stock, or plant.

*[There is no definition for “Grower” in the QNSC Guidelines, but you may wish to include one.]*

- (15) **“Horticultural Product”** - means those products stated in Group 18 of the United States Department of Labor Standard Industrial Classification Manual which are grown under cover or outdoors, including bulbs, flowers, shrubbery, florist greens, fruit stock, floral products, nursery stock, ornamental plants, potted plants, roses, seed, sod, Christmas trees, fruits, food crops grown in greenhouses, vegetables, and horticultural specialties not otherwise specified.

*[See IV.A.7. (p. 19) and Appendix C.I. (p. 38) – QNSC Guidelines.]*

- (16) **“Hold Order”** - means any written directive *[issued by a duly authorized regulatory official to a person who owns or controls any appliance, article, nursery stock, plant, plant product, or any other article that has been determined to be, or likely to be, infested with regulated pest(s)]* prohibiting movement from one location to another, except as otherwise prescribed in the directive.

*[See Appendix C.I. (p. 38); Appendix G - Types of Quarantine Action, 1. (p. 63) – QNSC Guidelines.]*

*[or]*

*[An alternative wording for this definition, without changing the intent, is as follows:*

**“Hold Order”** - *an order or notice written by the Department to the owner(s) or person(s) in charge or in possession of a premises, plant, conveyance, or article infested or infected with or exposed to infestation or infection of dangerously injurious plant pest(s), making it unlawful to move the aforementioned article(s) unless treated in accordance with the Department's prescribed procedures.]*

- (17) **“Infected”** - a plant that has been determined by the Department to be contaminated with an infectious, transmissible, or contagious pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist. This includes disease conditions, regardless of their mode of transmission, or any disorder of plants which manifest symptoms which, after investigation are determined by a federal or state pest prevention agency, to be characteristic of an infectious, transmissible, or contagious disease.

*[There is no definition for “Infected” in the QNSC Guidelines or in the NAPPO Compendium of Phytosanitary Terms, but you may wish to include one. See Delaware Code 3 Del. §1101.]*

- (18) **“Infested”**

*[There are two different definitions for ‘Infested’ in the QNSC Guidelines. Both are listed below.]*

**“Infested”** - means officially determined to be contaminated by a pest using prescribed methods.

*[See Appendix C.I. (p. 38) – QNSC Guidelines.]*

**“Infested”** - means actually infested with the pest or so exposed to infestation that would be reasonable to believe that an infestation exists.

*[See Appendix G - Definition of Terms, 4. (p. 62) – QNSC Guidelines.]*



[or]

[NAPPO definition: ***“Infested” - contaminated with a pest or so exposed to a pest that contamination can reasonably be expected to exist.***]

[or]

[An alternative definition used in the Delaware Plant Pest Law (3 Del. §1101), and based on the NAPPO definition, is as follows: ***“Infested” - means a plant that has been determined by the Department to be contaminated by a plant pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.***]

- (19) **“Landscaper(s)” - includes, but is not limited to, any person(s) who keeps at a premises, or procures for transplantation, nursery stock for installation on the property of another person.**

[There is no definition for “Landscaper” in the QNSC Guidelines, but you may wish to include one.]

- (20) **“Mail-Order Merchants(s)” - includes, but is not limited to, any person, dealer, or producer who sells or markets, wholesale or retail, any of its orders or business by drop shipment, catalog, telemarketing, telephone, mail-order, or other indirect means.**

[There is no definition for “Mail-Order Merchant” in the QNSC Guidelines, but you may wish to include one.]

- (21) **“Mark” - the Department shall affix, for purposes of identification or separation, a conspicuous official indicator to, on, around, or near, plants or plant material, known or suspected to be, infected or infested with a dangerously injurious plant pest. This includes, but is not limited to: paint, markers, tags, seals, stickers, tape, signs, or placards.**

[There is no definition for “Mark” in the QNSC Guidelines, but you may wish to include one. See Delaware Code 3 Del. §1101.]

- (22) **“Move” - means to ship, offer for shipment, receive for transport, carry or, in any manner whatsoever, relocate a regulated *article* from one place to another.**

[See Appendix C.I. (p. 39) – QNSC Guidelines. Note that ‘regulated thing’ has been changed to ‘regulated **article**’.]

***“Move” - means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.***

*[See Appendix G - Definition of Terms. 7. (p. 63) – QNSC Guidelines.]*

*[or]*

*[NAPPO definition: “Move” - means to ship, offer for shipment, receive from transportation, carry, or otherwise transport.]*

- (23) **“Nursery” - means any location where nursery stock is grown, propagated, stored, or sold; or any location from which nursery stock is distributed direct to a customer. (See “Sales location”).**

*[See IV.A.9. (p. 19) and Appendix C.I. (P. 39) – QNSC Guidelines.]*

- (24) **“Nursery Industry License” - a document issued by the Department authorizing a person(s) to engage in a nursery or nursery related business at a particular location under a specified business name.**

*[See IV. C.6. (p. 23), Appendix C.I. (p. 38), and Appendix N.I. (p. 105) – QNSC Guidelines. The above definition is the one being used in Delaware, and is slightly different than the definition for ‘license’ in Appendix C.I. (p. 38) and Appendix N.I. (p. 105): “Licence” - means a document issued by a state regulatory agency authorizing any person to engage in the nursery business at a particular location under a specified business name. Each state will have to make their own determination on this matter.]*

- (25) **“Nursery Stock” - means any plant for planting, propagation, or ornamentation, including, but not limited to:**

- (a) ***All plants, trees, shrubs, vines, perennials, grafts, cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants.***
- (b) ***Any other plant or plant part, including cut Christmas trees or any non-hardy plant or plant part, including, but not limited to: annuals, bedding plants, and vegetable plants.***

*[See IV.A.10. (p. 19), Appendix C.I (p. 39) and Appendix N.IV.B (p. 106) – QNSC Guidelines. Be sure to read the comments in Appendix N.IV.B (p. 106) concerning the definition of ‘nursery stock’. Each state plant regulatory official will have to determine what to include in a definition. The expanded definition above (which includes the bold-italicized part) is the one being used in Delaware.]*

*[The following definition of “nursery stock” is the federal definition taken from 7 USC §152 (U.S.C. Title 7 - AGRICULTURE, Chapter 8 - Nursery Stock and other Plants and Plant Products; check the following Internet site for the U.S.C. for Agriculture - <http://www.law.cornell.edu/uscode/7/ch8.html>): “For the purposes of this chapter the term*

*“nursery stock” shall include all field-grown florists’ stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.” (This is also the NAPPO definition for nursery stock.)]*

- (26) **“Owner(s)” - includes, but is not limited to: the person, persons, family, group, firm, association, business, company, incorporated entity, or organization with the legal right of possession, proprietorship of, or responsibility for the property or place where any of the regulated articles as defined in this Law are to be found, or person(s) who is in possession of, in proprietorship of, or has responsibility for the regulated articles.**

*[There is no definition for “Owner” in the QNSC Guidelines, but you may wish to include one. See Delaware Code 3 Del. §1101.]*

*[or]*

*[NAPPO definition: “Owner” - the person or organization having legal right of, and responsibility for, possession of regulated articles.]*

- (27) **“Person” - includes individual, firm, corporation, company, limited liability company, society, association, or other business entity.**

*[See IV.A.11. (p. 19), Appendix C.I. (p. 40), and Appendix G - Definitions of Terms. 8. (p. 63) – QNSC Guidelines. The definitions for “Person” on these pages are slightly different, so all the different entities were included in the above definition.]*

*[or]*

*[The following definition of “Person” is the federal definition taken from 7 USC §151 (U.S.C. Title 7 - AGRICULTURE, Chapter 8 - Nursery Stock and Other Plants and Plant Products): “The word “person” as used in this chapter shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations.”]*

*[or]*

*[NAPPO definition: “Person” - an individual, corporation, company, society, organization, association, or other business entity growing, handling, or moving regulated articles.]*

- (28) **“Pest” - means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to agriculture or the environment:**

(a) Any infectious, transmissible, or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation and hearing, is found and determined by a duly constituted federal, state or local *plant prevention organization*, to be characteristic of an infectious, transmissible, or contagious disease.

(b) Any form of animal life.

(c) Any form of vegetable life.

*[See II.A.1. (p. 2), IV.A.12. (p. 19), and Appendix C.I. (p. 40) – QNSC Guidelines. In part (a), ‘pest prevention agency’ has been replaced with ‘plant protection organization’.]*

[or]

**“Pest” - means all living stages of the insect, disease, or other pest organism of plants or plant products against which the quarantine is directed.**

*[See Appendix G - Definitions of Terms. 9. (p. 63) – QNSC Guidelines.]*

[or]

*[NAPPO definition: “Pest/Plant Pest” - means any biotic agent capable of causing injury to plants or plant products.]*

(29) **“Plant” - includes any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit, also including:**

(a) **Agricultural commodities: plant materials including any horticultural product.** *[See Appendix C.I. (p.38) – QNSC Guidelines.]*

(b) **Crop seed: the seed or seedlike fruit of grain, beans, flax, beets, onions, vegetables, fruits, or fiber plants, or any other crop, whether or not it is intended for planting purposes.** *[See Appendix C.I. (p. 37) – QNSC Guidelines.]*

(c) **Farm product: every agricultural, horticultural, viticultural, and vegetable product of the soil, and bees and apiary products, hay, dried beans, honey, and cut flowers.** *[See Appendix C.I. (p. 38) – QNSC Guidelines.]*

(d) **Nursery Stock.**

(e) *Non-cultivated or feral plants, gathered from the environment.*

(f) *Plants produced by tissue culture, cloning, or from stem cell cultures or other prepared media culture.*

*[See II.A.2. (p. 2), IV.A.13. (p. 19), and Appendix C.I. (p. 41) – QNSC Guidelines. The “Plant” definition was expanded to include a listing of other definitions used to describe plants and plant products (the bold- italicized portions). It is not necessary to include (a) through (f) in your definition. They are listed here to add specific examples to the definition, and you may wish to include them in your definition.]*

- (30) **“Plant Pest” - includes, but is not limited to: any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock, or non-cultivated plants. This includes but is not limited to: insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma like organisms, weeds, plants, or parasitic higher plants.**

*[See Delaware Code 3 Del. §1101 for a specific definition of “Plant Pest”. When developing the Delaware Nursery Law and Plant Pest Law, the State Attorney General’s Office suggested that the definition be as specific as possible when defining a “Plant Pest”, and to list as many types of organisms that could be considered a plant pest.]*

***“Plant Pest” - means a living organism which damages, or is capable of damaging, desirable vegetation and may include insects, mites, other invertebrate and vertebrate animals, viruses, bacteria, fungi, and other plants not to exclude seed plants. (An organism not commonly considered a pest may, under certain conditions become damaging, and may then be designated a pest by appropriate authority.)***

*[See Appendix H.1b. (p. 69) – QNSC Guidelines.]*

- (31) **“Pre-clearance” - an agreement between quarantine officials of exporting and importing states to pass plants, plant material, etc., through quarantine by allowing the exporting state to inspect the plants pre-shipment, rather than the importing state inspecting the shipment upon arrival.**

*[For information see III.J. (p. 17), IV.E. (p. 26), and Appendix K.IV.B. (pp. 88-89) – QNSC Guidelines. There is no specific definition for “Pre-clearance” in the QNSC Guidelines, but you may wish to include one.]*

- (32) **“Producer” - includes, but is not limited to: any person who raises, grows, or propagates, for profit or other reasons, outdoors or indoors, any horticultural product, nursery stock, or plant.**

*[There is no definition for “Producer” in the QNSC Guidelines, but you may wish to include*

one.]

**(33) “Public Nuisance”**

*[Note: the terms “Nuisance” and/or “Public Nuisance” are usually defined in a State’s Administrative and/or Criminal Code. A suggested definition is listed below.]*

**Any premises, plants, appliance, conveyances or articles which are infected or infested with any plant pests that may cause significant damage or harm, or premises where any plant pest is found.**

*[See the California Plant Quarantine and Pest Control Law §5401 – §5402; see also Nevada Law §555.110.]*

**(34) “Quarantine”**

*[There are two different definitions for “Quarantine” in the QNSC. Both are listed below.]*

**“Quarantine” - means a legal instrument duly imposed or enacted by the Department as a means for mitigating pest risk. *These actions include, but are not limited to: confinement or restriction of entry, movement, shipment, or transportation of plants known or suspected to be infected or infested with regulated pests.***

*[See Appendix C.I. (p. 41) – QNSC Guidelines. You may wish to include the additional second sentence following the definition (bold-italicized sentence) to clarify actions that can be taken when a quarantine is imposed.]*

*[The first sentence is the definition found in Appendix C.I. (p. 41). You may wish to add the following sentence, which can be found in III.B.2. (p. 11) of the QNSC Guidelines, in lieu of the italicized second sentence.]*

***A quarantine enables enforcement of prohibitions, restrictions, treatment and certification requirements and other pest risk mitigation or management measures identified as being necessary to prevent the harm or damage that could result from the introduction and permanent establishment of an exotic pest in an endangered area.***

*[or]*

**“Quarantine” – a quarantine is a restriction, imposed by duly constituted authorities, whereby the production, movement or existence of plants, plant products, animals, animal products, or any other article or material, or the normal activity of persons, is brought under regulation, in order that the introduction or spread of a pest may be prevented or limited, or in order that a pest already introduced may be controlled or eradicated, thereby reducing or avoiding losses that would otherwise occur through**

**damage done by the pest or through a continuing cost of control measures.**

*[See Appendix F.I. (p. 55) – QNSC Guidelines.; and the National Plant Board Membership Manual (p. 14).]*

- (35) “Roadside Market” - includes, but is not limited to a business engaged in the retail sale of plants, plant material, or nursery stock on a seasonal basis and which may operate from a specific sales location or multiple mobile locations.**

*[There is no definition for “Roadside Market” in the QNSC Guidelines, but you may wish to include one.]*

- (36) “Sales Location” - means every location from which nursery stock is delivered directly to a customer.**

*[See Appendix C.I (p. 41) and Appendix N.IV. (p. 106) – QNSC Guidelines.]*

- (37) “Secretary” - the Secretary of the State of (your State name) Department of Agriculture or his or her designee.**

*[There is no definition for “Secretary” in the QNSC Guidelines, but you may wish to include one, or one similar, in order to define the legal authority within your state agency.]*

- (38) “Sell” - includes offer for sale, expose for sale, possess for sale, exchange, barter, or trade.**

*[See IV.A.14 (p. 19) and Appendix C.I. (p. 41) - QNSC Guidelines.]*

- (39) “Shipment” - means any article or thing which is, may be, or has been transported from one place to another.**

*[See IV.A.15 (p. 19) and Appendix C.I. (p. 41) - QNSC Guidelines.]*

#### **§0002. Preemption of Regulatory Authority Over Nurseries**

**It is the intent of the Legislature to eliminate duplication of regulatory authority over nurseries. Notwithstanding any other law to the contrary, the authority to regulate, inspect, and permit: nursery owners, plant brokers, stock dealers, nurseries, nursery stock, plants, and plant products, including any aquatic plant which is grown in a nursery; is preempted to the Department.**

*[Note: See Florida Law §581.035.]*

### **§0003. Promulgation of Regulations**

**The Department may adopt reasonable regulations to implement and carry out the purposes and enforcement of this law.**

*[Note: Regulations have been promulgated in many states that deal with the following areas: grading standards, viability, plant quality, quality pests, pest tolerances, labeling, enforcement procedures, etc. Information on ‘pest freedom standards’ can be found in IV.C.4. (p. 21); ‘other standards’ at IV.C.5. (p. 22); ‘pest rating lists’ at Appendix D.V. (p. 49); ‘categories of plant pests’ at Appendix I. (pp. 71-73); ‘phytosanitary requirements standard’ at Appendix K.VIII. (pp. 93-95); ‘certificates standard’ at Appendix K.IX. (p. 95); ‘monitoring and reporting standards’ at Appendix K.X. (p. 95) – QNSC Guidelines.]*

### **§0004. Nursery Industry Licensing Requirements**

- (a) Any person(s), grower(s), agent(s), broker(s), dealer(s), mail-order merchant(s), commission merchant(s), consignor(s), landscaper(s), florist(s), greenhouse operator(s), chain store operator(s), garden center operator(s) roadside market operator(s), producer(s), or owner(s), engaged directly with the distribution of plants, plant products, plant material, nursery stock, or horticultural products, is required to inform the Department of the existence of their operation and to obtain a Nursery Industry License prior to initiating business operations.**
- (b) The aforementioned person(s) are required to obtain a Nursery Industry License for each of their businesses or sale/retail locations where multiple businesses or sales/retail locations exist.**
- (c) The aforementioned person(s) are required to renew their Nursery Industry Licenses each year that they remain in operation. Nursery Industry Licenses issued by the Department shall be valid for one year, from November 1 to October 31 of the following year.**
- (d) A Nursery Industry License Application must be filed with the Department on forms provided by the Department. The application for license shall include, as applicable, the following:**
  - (1) Name and address of the owner(s) of the business to be licensed.**
  - (2) Name and address of the business to be licensed.**
  - (3) Location of all plant, plant material, or nursery stock fields or storage areas.**
  - (4) The number of acres in plant or nursery stock production or the square footage of the sales area devoted to plants, plant material, or nursery stock.**



- (5) A list of the names, addresses, and plants, plant material, etc. received from all suppliers, producers, growers, etc. providing plants or nursery stock to the business.
- (e) Licenses issued by the Department shall be prominently displayed at the business location.

*[See IV.6. (p. 23), Appendix C.I. (p. 38), and Appendix N (pp. 105-109) – QNSC Guidelines]*

**§0005. Inspection of Nurseries and Businesses; Nursery Stock Certification**

- (a) After receiving the Nursery Industry License Application, the Department or its representatives shall examine or inspect all plants, plant material, or nursery stock located or grown on the business location or any other applicable location. Nurseries must maintain adequate weed control so a thorough inspection of the nursery stock can be made.
- (b) The Department shall conduct the aforementioned inspection or examination yearly or as directed by the Secretary, at such time as it deems best, with or without notice. The Department reserves the right to conduct unannounced inspections as frequently as it deems necessary to insure compliance with all sections of this Law.

*[See IV.C. (pp. 20-21) – QNSC Guidelines.]*

- (c) Upon the successful completion of an inspection, the Department shall issue a Nursery Stock Certificate to any business licensed under §0004. The Nursery Stock Certificate shall state:

**The nursery (or business premises) from which this shipment was made has been visually inspected and found to be in compliance with National Plant Board Standards of pest freedom.**

*[See IV. C.7.b.1-3 (pp. 24-25) – QNSC Guidelines.]*

- (d) The Nursery Stock Certificate shall be valid from January 1 to December 31.

*[See IV.C.7.b.2 (p. 24) – QNSC Guidelines. The date or time period your option.]*

**§0006. Plant Pest Infestations; Abatement of Public Nuisances; Official Marking of Infested or Infected Nursery Stock**

- (a) Any person(s) who has in their possession plants, plant materials, or nursery stock infested or infected with plant pests possesses a public nuisance.
- (b) Upon discovery or notification of such nuisance, the Department shall place a hold order on the aforementioned material. While under such a hold order it is an illegal action to sell, ship, transport, give away, destroy, or otherwise move, alter, or tamper with the aforementioned plants.
- (c) The Department may conspicuously mark all plants, materials, and articles known or suspected to be infected or infested with the plant pest. The Department shall notify the person(s), owner(s), or the tenant(s) in possession of the premises or area in question of the existence of the plant pest.
- (d) If the Secretary determines that the provisions of this Law have been violated, he or she shall order and direct that the nuisance be abated by whatever means necessary (including, but not limited to: destruction, confiscation, treatment, return shipment, or quarantine). The abatement of this public nuisance shall be at the expense of all of the aforementioned person(s) and shall be without any form of compensation.

*[See IV.C.1-4 (pp. 20-22) – QNSC Guidelines.]*

**§0007. Shipment of Nursery Stock Out-of-State: Labeling and Certification**

- (a) No person(s) shall sell, ship, or give away, by private carrier, commercial carrier, or any other means, any plants, plant materials, or nursery stock from any nursery, business or premises within the State, without an accompanying Nursery Stock Certificate as prescribed in §0005. The aforementioned information shall be plainly printed upon a tag, label, etc., that is not easily destroyed, which shall be firmly affixed on the exterior and in a conspicuous position upon each carload, box, container, package, etc. It is the responsibility of both the consignee and consignor to contact the Department to obtain a current Nursery Stock Certificate and to examine all shipments for the presence of all certification requirements.
- (b) Any person(s) or consignor who ships or moves plants, plant material, or nursery stock out of state or internationally by private carrier, commercial shipper, or any other means, is required to contact the Department to obtain the phytosanitary certifications required by the consignee's location. When the Department finds the aforementioned shipment in compliance with the consignee's location phytosanitary requirements, it will issue the required Phytosanitary Certificate to the consignor. The consignor shall conspicuously affix a copy of the Phytosanitary certificate to the exterior of each carload, box, container, package, etc. It is the responsibility of both the consignee and consignor to contact the Department to obtain the necessary Phytosanitary Certificates and to examine all shipments for the presence of all required certifications.

- (c) When applicable, all shipping containers must be conspicuously and appropriately marked on the exterior as to whether contents must be held for agricultural inspection or whether the contents have been pre-cleared by the Department, under the terms of a pre-clearance or interstate origin of inspection program (phytosanitary pre-clearance). It is the responsibility of both the consignee and consignor to obtain all required pre-clearances and to examine all shipments for the presence of all required certifications.

*[See IV.C.7-F. (pp. 23-26), Appendix J.1-Attachment B (pp. 75-84) – QNSC Guidelines.]*

#### **§0008. Shipment of Nursery Stock Into State: Labeling and Certification**

When any plants, plant materials, or nursery stock are shipped, sent or mailed into this State, to any person in this State, every carload, container, box, package, etc., shall be conspicuously labeled on the exterior with the name of the consignor, the state of origin, and the name of the consignee. The aforementioned shipment shall have conspicuously affixed to its exterior, a Nursery Stock Certificate from the state of origin showing that the contents have been examined by a qualified state or federal officer and found apparently free from all plant pests. It is the responsibility of both the consignee and consignor to examine all shipments for the presence of current and applicable nursery stock certifications.

*[See IV.C.7-F. (pp. 23-26) – QNSC Guidelines.]*

#### **§0009. Transportation Companies: Receiving Uncertified Nursery Stock; Failure to Notify Department**

Any person(s) who acts as the representative of a transportation company, private carrier, commercial shipper, common carrier, express parcel carrier, or other transportation entity, and receives, ships, or moves a carload, box, container, package, etc., of plants, plant materials, or nursery stock, that does not have a nursery stock certificate or proper phytosanitary certificates attached as provided for in §0005 or §0007 of this Law, and fails to immediately notify the Department shall be subject to the provisions of §0012 through §0016 of this Law.

*[See IV.C.7-F. (pp. 23-26), and Appendix J.3. (p. 76) – QNSC Guidelines.]*

#### **§0010. Labeling and Advertising of Nursery Stock**

- (a) Plants, plant materials, or nursery stock shall not be labeled or advertised with false or misleading information. This includes, but is not limited to: common name, scientific name, variety, place of origin, and growth habit.

- (b) A person(s) may not offer for sale, sell, give away, or in any way distribute plants, plant materials, or nursery stock, represented by some specific or special form of notation, including, but not limited to: 'free from', 'grown free of', unless such plants are produced under a specific program accepted by the Department to address the specific plant properties addressed in the special notation claim.
- (c) Before any person(s) advertises plants, plant materials, or nursery stock for sale, a copy of their Nursery Business License must be provided to the publisher or producer of the advertisement. The Nursery Business License number must be included in the advertisement and as appropriate, be legible or audible. This requirement shall extend to all forms of advertising media, including, but not limited to: radio, television, outdoor sign boards, telephone business directories (i.e. Yellow Pages), newspaper and magazine advertisements, or vehicular identification/advertisement.

*[See IV.C.4-5 (pp. 22-23) – QNSC Guidelines. See Florida 581.131(3) and Delaware Laws.]*

#### **§0011. Reciprocal Agreements**

The Department shall have the authority to make reciprocal agreements with the responsible officials of other states. Nursery stock or plants from any other state may be sold or delivered in *(your state name)* under the same conditions required for sale, delivery, or distribution of *(your state name)* nursery stock or plant materials. An official directory of certified nurseries and related nursery industry businesses will be accepted from other states in lieu of individual nursery licenses/certificates.

*[See IV.G. (p. 27), and Appendix B.I-VI. (pp. 33-34) – QNSC Guidelines.]*

#### **§0012. Violations**

- (a) Any person(s) who has in their possession plants, plant materials, or nursery stock that is uncertified, uninspected, and/or falsely or misleadingly labeled or advertised possesses an illegal regulated commodity. The aforementioned plants shall be considered infested or infected with plant pests and therefore deemed a public nuisance. Public nuisance shall be abated as prescribed in §0004 of this Law. If the Secretary determines that the provisions of this Section have been violated, he or she shall order and direct that the nuisance be abated by the destruction of all of the plants in question, unless the aforementioned person(s) (as applicable):
  - (1) Submits to the Nursery Stock Certification process.
  - (2) Provides proper phytosanitary pre-clearance, phytosanitary certification, or nursery stock certification.

- (3) Agrees to have the plants, plant materials, or nursery stock returned to the consignor.
- (4) Provides proper documentation, certification, or compliance to support advertising claims.

**The abatement of this public nuisance shall be at the expense of the aforementioned person(s) and shall be without any form of compensation.**

*[Note: the topic of compensation for nurseries for plant destruction was discussed by the subcommittee and it was thought that since nurseries are licensed and directly regulated by law, nurseries are not entitled to compensation by the state. Additionally, recovery of abatement costs by the Department can be obtained by using the Model Plant Pest Law.]*

- (b) Under the provisions of the Sections of this law any person(s) who willfully or knowingly:
  - (1) Refuses to comply with the provisions of this law;
  - (2) Misrepresents or falsifies information on a Nursery Industry License Application;
  - (3) Fails to obtain a Nursery Industry License;
  - (4) Fails to renew a Nursery Industry License, but continues business operations;
  - (5) Fails to display their Nursery Industry License;
  - (6) Falsely displays a Nursery Industry License;
  - (7) Misrepresents or falsifies their Nursery Industry License status;
  - (8) Misrepresents or falsifies information on a Nursery Stock Certificate;
  - (9) Fails to submit to a nursery inspection;
  - (10) Fails to provide the cooperation necessary to conduct a successful nursery inspection;
  - (11) Fails to satisfactorily pass the nursery inspection, but continues business operations;
  - (12) Possesses uncertified plants, plant materials, or nursery stock;
  - (13) Possesses an illegal regulated commodity;
  - (14) Defies a Department hold order;
  - (15) Violates a quarantine imposed by the Department;
  - (16) Fails to obtain nursery stock certification;
  - (17) Fails to obtain phytosanitary certification;
  - (18) Fails to obtain phytosanitary pre-clearance;
  - (19) Creates or maintains a public nuisance;
  - (20) Misrepresents or falsifies information to obtain nursery stock certification, phytosanitary certification, or phytosanitary pre-clearance;
  - (21) Defaces, mutilates, or destroys a nursery stock certificate,

- phytosanitary certificate, or phytosanitary pre-clearance certificate or other Department mark;
- (22) Fails to notify the Department of an uncertified shipment of plants, plant materials, or nursery stock;
  - (23) Transports uncertified plants, plant materials, or nursery stock;
  - (24) Misrepresents or falsifies plant advertisement or label information;
  - (25) Fails to comply with the Nursery Industry License advertising requirements;

shall be subject to the assessment of a civil penalty, the confiscation or destruction of any and all plants, plant materials, or nursery stock found on the premises or contained in the shipment in question, and/or the suspension or revocation of their current Nursery Industry License or any future operation privileges granted under this law.

*[See Appendix H.IV.B. Refusal, Revocation, and Suspension - Enforcement (pp.107-108) – QNSC Guidelines.]*

#### **§0013. Administrative Hearing Procedures**

- (a) Failure to comply with the provisions of this law shall result in the assessment of a civil penalty.
- (b) No civil penalty shall be imposed until an administrative hearing is held before the Secretary or his or her designee. Administrative hearings for the provisions of this Law shall be conducted within 30 days of the violation of the provisions of this Law. The Department shall issue a decision in writing to the person(s) charged with a violation of a provision of this Law within 30 days of the conclusion of the administrative hearing.
- (c) The person(s) charged with a violation of a provision of this Law will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel, and to provide witnesses in his or her own behalf.
- (d) The Secretary, for the purposes of investigation of a possible violation of this Law and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony, and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.
- (e) The Department shall preserve a full record of the proceedings and a transcript may

**be purchased by any interested person.**

*[It is strongly suggested that if you have an administrative hearing to determine violations and assess penalties, that you include your state's hearing procedures in the Nursery Law.]*

#### **§0014. Appeals**

**A person who feels aggrieved by the Department as a result of the administrative hearing held under the authority of this Law may take appeal, within 30 days, to the Superior Court. After full hearings, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds, therefore, shall be served upon the Secretary.**

*[If you have an administrative hearing process, it is suggested that the appeal process be included in the law.]*

#### **§0015. Civil Penalties**

- (a) The civil penalty for violation of any Section of this Law not already stated will be the assessment of a civil penalty, the confiscation or destruction of any and all plants, plant materials, or nursery stock found on the premises or contained in the shipment in questions and/or suspension or revocation of the current Nursery Industry License or any future operation privileges granted under this Law.**
- (b) Any person(s) who violates any Section of this Law or interferes with the Department or its representatives in the enforcement of the provisions of this Law, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$100, and no more than \$1,000 on each count.**

*[See Appendix H.IV.B. Refusal, Revocation, and Suspension - Enforcement (pp.107-108) – QNSC Guidelines.]*

#### **§0016. Criminal Proceedings; Penalties**

*[Every state is different in how they handle criminal prosecutions. Each state official will have to discuss this section with your State Attorney General (i.e. criminal misdemeanor, felony, etc.).]*

#### **§0017. Severability**

**If any sections, sentence, clause, phrase, or other portion of this law is for any reason held to be unconstitutional, the decision shall not affect the validity of the remaining portions thereof.**

*[From Rhode Island Code 2-16-13.]*

#### **§0018. Fee Schedule**

*[If applicable, include your state's fee schedule here or you can adopt a fee schedule by regulation.]*